IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/07/2003

CORAM

THE HONOURABLE MR.JUSTICE M.KARPAGAVINAYAGAM

S.A.No.487 of 2003
and
C.M.P.No.4255 of 2003

1. Sengoda Gounder
2. Kuppayammal .. Appellants

-Vs-

1. Chinna Ponnal
2. K.Arthanareeswaran
3. B.K. Kaleeswaran .. Respondents

Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 3-4-2003 in A.S.No.69 of 2001 on the file of the Sub-Court, Bhavani, Erode District against the judgment and decree dated 19-12-2000 in O.S.No.318 of 1997 on the file of the II Additional District Munsif Court, Bhavani, Erode District.

!For appellants: M/s.A.K.Kumaraswamy

^For Respondents : ---

:JUDGMENT

Having failed in both the Courts below, the appellants/plaintiffs have filed this appeal.
2. The plaintiffs filed the suit for declaration that the plaintiffs are the absolute owners of the 'A' schedule suit property and for delivery of the 'B' schedule suit property, after the lifetime of the first defendant, which is in the possession of the second and third defendants.
3. The said suit was dismissed and the same was also confirmed in the appeal filed by the plaintiffs. Hence, this second appeal.
4. According to the plaintiffs, the suit properties originally belonged to one Chellappa Gounder. The second plaintiff is the daughter of the said Chellappa Gounder born through his first wife. The first respondent--Chinna Ponnal is the second wife of late Chellappa Gounder. In the suit filed by the first respondent in O.S.No.48 of 1959 against Chellappa Gounder, she obtained a decree for maintenance, underwhich, the suit properties were given to the first respondent, the second wife of Chellappa Gounder on condition that she should enjoy the benefits arising out of the

lands till her lifetime and after her demise, the property should devolve upon the legal heirs of Chellappa Gounder. This decree was passed on 12-12-1959. On 24-5-1962, Chellappa Gounder executed a settlement deed, bequeathing the suit properties to the plaintiff. To the contrary, on 11-4-1996, the first respondent, the second wife, sold the suit properties to the other respondents. Hence, the suit.

5. The respondents/defendants contested the suit, stating that the first respondent/first defendant, the second wife of the said Chellappa Gounder, would become the absolute owner of the suit properties by virtue of Section 14(1) of the Hindu Succession Act and as such, she is entitled to alienate the same.

6. The said objection of the respondents was accepted by both the Courts below, holding that the sale of the suit properties by the first respondent in favour of the other respondents is perfectly valid.

7. Learned counsel for the appellants contended that the impugned judgments of both the Courts below are wrong, in view of the fact that the facts of the case would attract Section 14(2) of the Hindu Succession Act and not Section 14(1), as held by the Courts below. Learned counsel for the appellants would cite the following authorities in support of his contention:
(i) NARAINI DEVI VS. RAMO DEVI (AIR 1976 SC 2198);
(ii) V.V. SUBHBA RAO VS. CHATLAPALLI SEETHARAMARATNA RANGANAYAKAMMA (AIR 1997 SC 3082) and
(iii) K.SATYANARAYANA VS. G.SITHAYYA (AIR 1987 SC 353).

8. I have carefully considered the submissions made by learned counsel for the appellants and gone through the judgments impugned and the decisions cited supra.

9. On going through the said decisions, I am unable to persuade myself to accept the contention urged by learned counsel for the appellants, since the findings in those decisions relied on by learned counsel for the appellants, with reference to Section 14(2) of the Hindu Succession Act, would not apply to the present facts of the case. As per the above decisions, Section 14(2) of the Act would apply to the party only when there is no pre-existing rights. That is not the case here. The first respondent, being the second wife of Chellappa Gounder, cannot be said that she did not have any pre-existing rights of maintenance.

10. Section 14 of the Hindu Succession Act reads thus:
"14. Property of a female Hindu to be her absolute property--
(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.
(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil Court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property."

11. While interpreting these Sections, the Supreme Court, in the decisions reported in 1998 (2) C.T.C. 253 (RAGHUVIR SINGH VS. GULAB SINGH), 2001 (2) T.L.N.J. (SC) 64 (SMT. PALCHURI HENUMAYAMMA VS. TADIKAMALLA KOTILINGAM & OTHERS) and 2001 AIR SCW 3835 (BRAHMA VART SANATAN DHARM

MOHAMANDAL VS. KANHYALAL BAGLA), would hold that by virtue of pre-existing rights of maintenance out of estate of her husband, provisions of Section 14(1) of the Hindu Succession Act are attracted and as such, the widow becomes the full owner of the suit lands on the date when the Hindu Succession Act, 1956 came into force. On a perusal of these judgments, it is clear that consistently, the Supreme Court has held that if a female Hindu acquired the property either before or after the commencement of the Act in lieu of maintenance, then Section 14(1) of the Act is attracted. When once the right of maintenance comes in, it has to be considered as to whether on the date when she acquires the property, has she got a pre-existing right of maintenance. If the pre-existing right of maintenance is in existence and that a female Hindu is acquiring the property in lieu of such right, then the provision of Section 14(1) of the Act comes into play. Section 14(2) comes into play when the female Hindu acquires the property only under the documents mentioned therein without any preexisting right.

12. It is by force of Section 14(1) of the Act, that the widow's limited interest gets automatically enlarged into an absolute right notwithstanding any restriction placed under the document or the instrument. So far as sub-section (2) of Section 14 is concerned, it applies to instruments, decree, awards, gifts etc., which create an independent or a new title in favour of the female for the first time. It has no application to cases where the instrument/document either declares or recognises or confirms her share in the property or her "preexisting right to maintenance" out of that property.

13. As held by the Supreme Court in 2001 AIR SCW 3835 (supra) and 1 991 (4) S.C.C. 312 (THOTA SESHARATHANNA VS. THOTA MANIKYAMMA (DEAD) BY LRs), in view of Section 14(1) of the Hindu Succession Act, the widow would be the absolute owner of the property. In such cases, exception provided under Section 14(2) of the Act would not be applicable. Section 14(2) of the Act is in the nature of a proviso or an exception to Section 14 and comes into operation only if acquisition in any of the methods indicated therein is made for the first time without there being any pre-existing right in the female Hindu to the property. If the case falls under the provisions of Section 14(1) of the Act, then the female Hindu shall be held to be full owner of the property and sub-section (2) of Section 14 will only apply where the property is acquired without there being any pre-existing right of the female Hindu in such property.

14. These aspects have been dealt with in detail by both the Courts below and it is correctly held that Section 14(1) of the Act alone would apply in this case and not Section 14(2). This finding in my view, cannot be said to be wrong.

15. There is no substantial question of law in the second appeal. The second appeal is devoid of merits and the same is dismissed at the admission stage itself. Consequently, C.M.P.No.4255 of 2003 is also dismissed.

Index : Yes
Internet: Yes

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To
1. Sub-Judge, Bhavani, Erode District.
2. II Additional District Munsif, Bhavani, Erode District.